

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James A. Parker

**Title:** *New Mexico Top Organics-Ultra Health v. Kennedy et al.*

**Case Number:** 17-cv-599-JAP-LF

**Date:** August 6, 2018

**Courtroom Clerk:** Emily P. Carey

**Court Reporter:** John De La Rosa

**Attorneys Present for Plaintiffs:**

Brian Egolf, Jr. & Kristina Caffrey

**Attorneys Present for Defendants:**

Christopher T. Saucedo & Daniel Apodaca

**Type of Proceeding:** Non-Jury Trial Day 1

**Start Time:** 9:00 a.m.

**End Time:** 4:34 p.m.

**Time in Court:** 5 hr 30 min

**Notes on the Proceedings:**

- 9:03 a.m. Court in session. Counsel state appearances. Brian Egolf and Kristina Caffrey for Plaintiff. Christopher Saucedo and Daniel Apodaca for Defendants.
- 9:04 a.m. Court admits into evidence Plaintiff's Exhibits 1-15 and 20-21 without objection. Plaintiff's Exhibit 22 is withdrawn. Court admits into evidence without objection Defendants' Exhibits A through E. Defendants' Exhibits F and G are withdrawn. Court reviews order of Plaintiff's witnesses.
- 9:07 a.m. Plaintiff calls Ms. Leigh Jenke. Witness is sworn. Mr. Egolf begins direct-examination. Mr. Egolf references previously admitted Plaintiff's Exhibits 3, 4, 5, 6, 7, 8 and 9 during examination. Mr. Egolf references Plaintiff's Exhibit 19 and asks the witness about the Exhibit. Court limits questions to applicable portions of Exhibit 19. Direct examination continues.
- 10:14 a.m. Mr. Egolf passes the witness. Court in brief recess.
- 10:32 a.m. Court in session. Mr. Apodaca begins cross-examination of the witness Leigh

Jenke. Mr. Apodaca refers witness to Plaintiff's Exhibit 19, NMSA 1978, § 26-2B-5, and continues cross-examination. Mr. Apodaca refers witness to Plaintiff's Exhibit 3, 2016 State Fair Application, and continues cross-examination. Mr. Apodaca refers witness to Plaintiff's Exhibit 5, and continues cross-examination. Mr. Apodaca refers witness to Plaintiff's Exhibit 6, 2017 State Fair Application, and continues cross-examination

- 10:56 a.m. Mr. Apodaca passes the witness. Mr. Egolf begins redirect examination.
- 11:01 a.m. Mr. Egolf passes the witness. Ms. Jenke is excused. Mr. Egolf calls witness Duke Rodriguez. Witness is sworn. Mr. Egolf begins direct examination. Mr. Egolf references Plaintiff's Exhibit 18 and continues direct examination. Court admits Exhibit 18 without objection. Direct examination of the witness continues. Mr. Egolf references Plaintiff's Exhibits 16 and 17 and moves to admit. Defendants state objections to admission of Exhibits 16 and 17. Mr. Egolf responds. Parties argue their positions. Court takes judicial notice of Plaintiff's Exhibits 16 and 17, and the Court admits Plaintiff's Exhibits 16 and 17. Mr. Egolf continues direct examination of the witness.
- 11:56 a.m. Mr. Egolf passes the witness. Court in recess.
- 1:22 p.m. Court in session. Mr. Saucedo begins cross-examination of witness Duke Rodriguez. Mr. Saucedo moves to admit Defendant's Exhibit H. Mr. Egolf asks for more foundation. Mr. Saucedo lays additional foundation. Court admits Exhibit H without objection. Direct examination continues.
- 1:58 p.m. Mr. Saucedo passes the witness. Plaintiff has no redirect examination. Witness is excused.
- 1:59 p.m. Mr. Egolf calls witness Raina Bingham. Witness is sworn. Mr. Egolf begins direct-examination. Mr. Egolf references Plaintiff's Exhibits 3, 6, 7, 21, 2, 11, 13, 14 and 15 during direct examination.
- 3:16 p.m. Mr. Egolf passes the witness. Court in recess.
- 3:28 p.m. Court in session. Mr. Apodaca conducts examination of the witness Raina Bingham. Mr. Apodaca references previously admitted Defendants' Exhibit A and continues examination. Mr. Apodaca references previously admitted Defendants' Exhibit B and continues examination. Mr. Apodaca references NMSA 1978, § 16-6-4 and N.M.A.C. 4.3.10, and continues examination.
- 4:22 p.m. Mr. Apodaca passes the witness. Mr. Egolf begins redirect examination.
- 4:32 p.m. Mr. Egolf passes the witness. Mr. Apodaca asks additional questions of the witness.

4:33 p.m. No further questions for the witness. Witness is excused. Court discusses remaining witnesses.

4:34 p.m. Court in recess until 9:00 a.m. following day.